

Remarks

Each of the Examiner's objections or rejections is addressed below in the order they were presented in the Office Action.

Terminal Disclaimer No Longer Being Required

The undersigned acknowledges the determination made by the Examiner that a terminal disclaimer is not necessary.

Requirement For A New Oath Or Declaration

A new Declaration was previously filed with the Petition To Revive An Abandoned Application Under 37 C.F.R. 1.137(b). The new Declaration refers to the present application.

Rejection Pursuant to 35 U.S.C. § 112, First Paragraph

Claim 10 was rejected. Claim 10 is amended herein to avoid the rejection. Basis for the amendment to Claim 10 appears in the specification at page 10, lines 23-24.

Claim 12 was rejected. Claim 12 is canceled, which avoids the rejection.

Rejection Pursuant to 35 U.S.C. § 103(a) Over Newman et al. (US 6054205) in View of Cooper (S 6254817) or Japan 777 (JP 7-277,777) available as prior art under 35 USC 102(b), and in View of at least one of Great Britain '687 (GB 2023687), Piazza (US 4229497) and Berk et al. (US 5753368) and optionally Schupack (US 4617219).

The rejection refers to the citation of Schupack as, "optionally Schupack." There is no basis in the MPEP for authorizing an optional rejection. Request is made to unequivocally state a rejection based on Schupack or withdraw the same.

The rejection that refers to "Berk" is regarded as intending to refer to "Berke et al."

The rejection, at page 4, line 15, to page 5, line 2, applies the reference, Newman et al., to method steps (1), (2) and (3). The method steps are not recited in Applicant's claims, and are not

recited in Newman et al. Accordingly, the rejection is not applying the reference to the actual method steps recited in Applicant's claims, and is not reading Applicant's claims on the reference. The rejection rewords Applicant's claim language to compose new method steps (1), (2) and (3) for the purpose of making the rejection. Thereby, the rejection is in error.

Page 5, lines 5-10, applies Newman et al. to method steps described as, "depositing ...," and "applying ...," and "pressing ...". The method steps are not recited in Applicant's claims, and are not recited in Newman et al. Accordingly, the rejection is not applying the reference to the actual method steps recited in Applicant's claims, and is not reading Applicant's claims on the reference. The rejection rewords Applicant's claim language into new method steps, "depositing ...," and "applying ...," and "pressing ...," for the purpose of making the rejection. Thereby, the rejection is in error.

The rejection, at page 5, lines 13-16 refers to Newman et al., and states, "...Newman et al teaches coating the glass fibers before making the mesh instead of prior to making the mesh." The nature of the rejection can not be understood.

The rejection, at page 7, line 15, states, "Claim 9 reads on simultaneously providing and uniting." Applicant's claims do not recite "providing." Further, Applicant's claims do not recite "simultaneously providing." Thus the rejection is not applying the prior art to the language and actual method steps recited in Applicant's claims. The rejection rewords Applicant's claim language into new language, for the purpose of making the rejection. Thereby, the rejection is in error.

The rejection at page 6, line 2, refers to a "partial oral translation of paragraph 11 of Japan 777 by a PTO translator." However, an oral translation does not qualify as prior art, as defined by the patent statutes. An oral translation can not be validated by describing in the Office Action what was heard. A description of what was heard, constitutes hearsay evidence. Further, an Office Action is not prior art. Thus, the rejection in view of Japan 777 is based on non-statutory evidence. The Office Action has not established a prime facie proof that Applicant's

claims are obvious in view of Japan 777 combined with the primary reference. Further, the Office Action does not reveal the entire translation of the Japanese patent publication.

Further, the rejection, at page 6, lines 1 and 2, states, "See paragraph 11 of machine translation," (i.e., a machine translation of paragraph 11 of Japan 777). The machine translation was supplied with the Office Action. The machine translation, when read, speaks for itself. The machine translation, when read, is not sufficiently literate to convey an understandable meaning. Because the machine translation cannot be understood when read, the Office Action has not established a prima facie proof that Applicant's claims are obvious in view of Japan 777 combined with the primary reference.

The rejection relies on three references for a "suggestion from at least one of Great Britain '687, Piazza and Berke et al. to use a wetting agent to facilitate incorporation of fibers in cementitious material. See the rejection, at page 7, lines 5-11, and at page 8, lines 8-9. The rejection, at page 8, lines 5-7, states, "Piazza and Berke et al. suggest applying a wetting agent to fibers to be incorporated in cementitious material." Therefore, Piazza and Berke et al. are cumulative of Great Britain '687, as relied upon in the rejection.

Claim 9 is amended to recite a hydrophilic binder, to avoid a combination of such cited references, Great Britain '687, Piazza and Berke et al., with Newman et al. Antecedent basis for such an amendment appears in the specification, at page 11, lines 12-17. The cited references, Pizza, Berke et al. and Britain '687, do not disclose a hydrophilic binder on a second layer having randomly oriented fibers, as recited in Applicant's amended claim 9.

Applicant's previously filed Remarks accompanying the Amendment, filed June 30, 2005, pertain to deficiencies present in the disclosure of the reference, Great Britain '687. Applicant's previously filed Remarks are specifically incorporated herein by reference, so as to apply to the combination of Great Britain '687 with the primary reference. The Office Action, at page 11, lines 4-6, paraphrases Applicant's Remarks pertaining to Great Britain '687. The paraphrase has truncated Applicant's Remarks, to the extent, that the entirety of Applicant's

Remarks are not being considered by the Office Action. Applicant's claims are amended herein, to further define over Great Britain '687, as discussed hereinbelow.

The rejection, at page 6, lines 15-18, relies on the reference Piazza, at column, 5, lines 6-12, which states, "Mechanical treatments [are used]... to work the glass fiber matrix and/or scrim reinforcing material into the wet cement mixture. For example rollers... can be applied to the mixture of glass fiber and cement and/or the scrim reinforcing material to insure thorough wetting of the reinforcing materials by the cement. The use of dilute latex can also assist in the wetting operation." Such a disclosure in Piazza discloses the use of dilute latex in conjunction with working with the wet cement mixture. Thus, Piazza does not teach applying a wetting agent to mesh fibers and randomly oriented fibers, followed by, imbedding the same in cementitious material, as claimed in Applicant's claims. Piazza is cumulative of Great Britain '687 for disclosing a wetting agent.

Embodiments disclosed by Piazza at column 5, line 52, to column 6, line 22, involves a sheet of scrim material 14 applied to the bottom of a mold before depositing a first layer of [mixed] glass and cement." Piazza further discloses, at column 6, lines 16-19, "It is preferred to form the cement glass fiber matrix by successively depositing chopped glass fibers and wet cement (preferably mixed with shorter glass fibers) while vibrating the mold." All the embodiments disclosed by Piazza refer to laying down a sheet of scrim material 14 in a mold cavity, followed by depositing a layer of mixed cement and glass fibers in the mold cavity, which is quite unlike the method claimed by Applicant.

The rejection, at page 6, last paragraph, relies on column 1, lines 10-29 of the reference Berke et al., which teaches, "U.S. Pat. No. 5,399,195 ... [describes] polyolefin fibers that were treated with a wetting agent by passing filament bundles through lubricant application rollers." Further, column 4 of Berke et al. discloses individual, coated polypropylene fibers embedded in cement paste, which fibers were tested for pull-out resistance. The reference clearly is limited to a disclosure of a method of coating individual fibers and testing the individual fibers for pull out

resistance, which is quite unlike the method claimed by Applicant. Berke et al. is cumulative of Great Britain '687 for disclosing a wetting agent.

The rejection refers to Cooper et al. for teaching, encapsulating glass fibers in alkali resistant thermoplastic before forming a mesh with the glass fibers. The mesh is heat fused, as described by Cooper et al. at column 6, lines 15-25. Cooper discloses a mesh, but does not disclose a second layer. Applicant's claim 9 is amended to recite a method that involves a recited second layer having randomly oriented fibers joined by a hydrophilic binder, which defines over heat fusing, as disclosed by Cooper et al. Further, Claim 9 is amended to recite, applying a wetting agent on the recited mesh fibers, and on the second layer, wherein said hydrophilic binder on said randomly oriented fibers reduces the need for said wetting agent on said second layer. Antecedent basis for such an amendment appears in the specification, at page 11, lines 12-17.

In Newman et al, a mesh glass scrim and a melt blown web are disclosed. Since the melt blown web is fused together upon melting, a hydrophilic binder on the melt blown web is not disclosed, and would not be needed. Further, Neumann does not disclose, a reduced need for a wetting agent on the melt blown web. No wetting agent is disclosed by Newman et al. Thus, Newman et al. does not disclose a wetting agent and a hydrophilic binder on a second layer of randomly oriented fibers, as recited in Applicant's amended claim 9.

Schupack is referred to in the Office Action, at page 8, last paragraph, and at page 8, second paragraph, for disclosing, melt bonding a nonwoven to a separately made scrim. Schupack does not disclose a wetting agent and a hydrophilic binder on a second layer of randomly oriented fibers, as recited in Applicant's amended claim 9.

The reference Kennedy was applied in a rejection of Claim 12, now canceled. Kennedy discloses a fire resistant latex and a surfactant to assist the latex in penetrating a mat of fibers. Applicant's claims are amended to recite a wetting agent to enhance adhesion of an alkali cementitious matrix, which is not disclosed by Kennedy.

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Amendment in response to
Office Action of 11/15/2005

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Summary

In view of the Amendment to the claims, and the Remarks supporting patentability,
allowance is requested.

Respectfully submitted,

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(Date)

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